

STATE OF MICHIGAN  
COURT OF APPEALS

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ALLEN LEWIS LEASHER,

Plaintiff-Appellee,

v

SHERYL ELAINE LEASHER,

Defendant-Appellant.

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UNPUBLISHED

October 2, 2003

No. 246653

Montcalm Circuit Court

LC No. 93-000696-DM

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order changing custody of fourteen-year-old Brittany Leasher from defendant to plaintiff. We affirm.

I.

Defendant first argues that the trial court erred in finding proper cause or a change in circumstances thereby permitting reexamination of the previous custody order. We disagree.

In a child custody matter, this Court reviews the trial court's findings of fact to determine if they were against the great weight of the evidence. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). The trial court's factual findings will be affirmed "unless 'the evidence clearly preponderates in the opposite direction.'" *Id.*, quoting *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000).

MCL 722.27(1)(c) permits modification of a child custody order if there is "proper cause shown" or a "change in circumstances." MCL 722.27(1)(c); *Foskett, supra* at 5. The party seeking a custody change has the burden of establishing proper cause or a change in circumstances. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). Only after proper cause or a change in circumstances is established may the trial court determine whether there is an established custodial environment and whether a change would be in the child's best interest. *Id.*

In this case, the trial court ruled: "This court finds that proper cause has been shown or sufficient change in circumstances to revisit the question of custody of the minor child of the parties. The mother has lost control as a parent by her continuous moves evidenced by the child's grades in school." Although the court was correct that defendant moved seven times

since 1994, only one of the moves occurred after 1997 and plaintiff did not petition for custody until 2001. But the evidence nonetheless clearly established that Brittany's grades significantly deteriorated during the 1½ years she spent in middle school, which she attended at the time of the hearing. We find plaintiff established proper cause to warrant a reexamination of Brittany's custody.

## II.

Defendant next argues, with respect to factors c and f, MCL 722.23(c) and (f), that the trial court erred by admitting the Family Independence Agency (FIA) investigator Sharon McCuistion-Lewis' testimony about statements made by Nancy Parsons about statements made by defendant. This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Powell v St John Hospital*, 241 Mich App 64, 72; 614 NW2d 666 (2000).

At trial, defendant objected on the basis of hearsay to McCuistion-Lewis' testimony about defendant's statements to Parsons. There are two levels to this hearsay analysis. On the first level, defendant's statements to Parsons were not hearsay, but rather, admissions made by a party-opponent. MRE 801(d)(2). On the second level, Parson's statements to McCuistion-Lewis, even if hearsay, were admissible under MRE 703, which permits experts to testify regarding the "facts or data in the particular case upon which an expert bases an opinion or inference . . . ." "[A]n expert may base an opinion on hearsay information or on findings and opinions of other experts." *Forest City Enterprises v Leemon Oil Co*, 228 Mich App 57, 73; 577 NW2d 150 (1999).

Defendant also argues for the first time on appeal that admission of McCuistion-Lewis' testimony regarding Parson's statements violated the psychologist-patient privilege. To properly preserve an evidentiary issue for appellate review, an objection regarding the admission of evidence must have been made on the same ground that is asserted on appeal. *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997), citing MRE 103(a)(1). This Court reviews unpreserved evidentiary issues to determine whether a plain error occurred that affected a party's substantial rights. *Hilgendorf v St John Hosp and Medical Center Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001). However, defendant cites no authority for the proposition that the evidence was improperly *admitted*. Rather, defendant cites authority indicating that the evidence was not *discoverable*. Additionally, defendant fails to cite any record evidence that Parsons was a psychiatrist or psychologist as asserted. Therefore, this issue as it is not properly presented. *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998); MCR 7.212(C)(7). We note, however, that even if McCuistion-Lewis' testimony about Parson's statements was inadmissible, defendant's statements directly to FIA investigator Jack Sutton were sufficient to support the trial court's findings.

## III.

Finally, defendant argues that the trial court committed clear error in failing to advise the parties of the joint custody alternative. We disagree.

In pertinent part, MCL 722.26a(1) provides:

In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court.

The trial court originally granted the parties joint legal custody; that order was not modified. Joint legal custody is one type of joint custody. MCL 722.26a(7). Thus, although the court did not specifically advise the parties of joint custody on the record, we find the error to be harmless in light of the continued award of joint legal custody.

Affirmed.

/s/ Jessica R. Cooper  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly